

DRAFT



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

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Planning Board Meeting

February 18, 2014

7:00 p.m., Pitts Center

MEETING MINUTES

I. CALL TO ORDER:

Chairperson Sam Williams called the meeting to order at 7:00 pm. Planning Board Members Gray Berryman, Mike Florez, Elizabeth Morey, Sam Williams, ETJ Member John Finelli, Town Attorney Ben Gallop, and Town Planner Wes Haskett were present. Alternate members Betty Corbin and David Neal were absent with excuse. Since ZTA-14-02 did not pertain to the ETJ areas, representative John Finelli did not participate in the voting or discussion related to the application.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Chairperson Williams motioned to amend the agenda by making Item C under New Business Item A. Elizabeth Morey seconded the motion. The motion passed unanimously (5-0).

IV. APPROVAL OF MINUTES:

Sam Williams motioned to amend the minutes of the October 21, 2013 Planning Board Meeting to reflect that representative John Finelli was not in attendance since there were no items on the Agenda pertaining to the ETJ areas. Mike Florez seconded the motion. The motion passed unanimously.

V. OLD BUSINESS:

None

VI. NEW BUSINESS:

A. Rules of Procedure-Time of Regular Meetings

Chairperson Williams stated that the Town Council had recently revised their regular meeting time from 7:00 to 5:30 and that he had been approached about doing the same with the Planning Board's regular meeting time. By doing so, it would be more convenient for Town Staff by not having to wait from 5:00 until 7:00 for the meeting to begin. Mike Florez motioned to revise the Board's regular meeting time from 7:00 to 5:30. Elizabeth Morey seconded the motion. The motion passed unanimously.

B. ZTA-14-01: Board of Adjustment

Chairperson Williams introduced the application and called on Wes Haskett to present the Staff Report (attached).

During his Staff Report, Wes Haskett indicated that he had done a survey of other jurisdictions with populations under 5000 asking if their Planning Board served as the Board of Adjustment (BOA). Of the respondents, about 60% indicated that they had combined Planning Board and Board of Adjustments. Chairperson Williams asked if the respondents to the survey indicated how well their Planning Boards were doing with handling the duties of both the Planning Board and the Board of Adjustment. Wes Haskett stated that they did not.

Elizabeth Morey asked if any of the respondents were from Dare County. Wes Haskett stated that there were not. Ben Gallop stated that he believed at least one jurisdiction in the region assigned the duties of the BOA to the Planning Board or was in the process of doing so.

Mike Florez asked if the only changes to the current BOA ordinance in the ZTA were to assign the BOA duties to the Planning Board and if the decisions the BOA makes are final. Ben Gallop stated that that it was not and that the ZTA is a complete re-write of what was currently adopted. When the Legislature changed the General Statutes that apply to the BOA, they included more detail and brought in some things that had been previously problematic. The decisions made by the BOA are quasi-judicial and the Planning Board's decisions are advisory. The BOA makes decisions on appeals and variances which can be appealed to Superior Court.

Chairperson Williams asked if there would be a conflict of interest if the BOA duties were assigned to the Planning Board. Ben Gallop stated basically no and that the Planning Board would treat the separate duties as separate meetings.

Gray Berryman asked if it was unusual for the BOA to not have a meeting since 2008. Ben Gallop stated that it is unusual although the zoning makeup of Southern Shores is different than most jurisdictions with very few commercial properties and fewer problematic zoning restrictions to be challenged.

Chairperson Williams asked if a quorum of the BOA was 4/5. Ben Gallop stated that it only applied to variances and it would have to be 4/5 of the members seated at a meeting. An applicant could decide to waive the 4/5 requirement at their discretion.

Chairperson Williams asked for the definition of tolled as used in Section 36-362, (d). Ben Gallop stated that it is a legal term which basically means extended. Following discussion of whether or not to replace tolled with extended, the Board decided to use the term extended. Ben Gallop indicated that by doing so, the number of days allowed for an applicant to pay the applicable fee would change from 30 days to 45 days which the Board felt was acceptable.

Chairperson Williams stated that all of the proposed language following Section 36-366 was very detailed and asked if it could be taken out and used in the BOA Rules of Procedure. Ben Gallop stated that the language was primarily word for word from the Statutes. The BOA's Rules of Procedure should not include standards that the applicant has to meet but should include the setup of the agenda and other administrative procedures.

Chairperson Williams asked if the official that could be challenged was only the Town Planner Wes Haskett and if/when there is an application to consider as the BOA, who

would take the minutes and would Town Staff be represented by Counsel. Ben Gallop stated others could be challenged and that it would depend on the application. It is not uncommon for the official being challenged to be represented by an attorney, the BOA represented by another attorney, and the Town Clerk to serve as the clerk for the BOA. John Finelli asked if the Town Planner could tell a potential applicant that their application would not meet the requirements for a variance. Ben Gallop stated that it could be a mistake and that he would advise caution in doing so.

The Board discussed whether or not a quorum should consist of five or six members since an application pertaining to the ETJ could have up to six voting members. Ben Gallop stated that the voting requirement for a variance is 4/5 of the members seated and that it would have to be established in the Rules of Procedure.

Elizabeth Morey motioned to recommend approval of the ZTA as amended to the Town Council. Mike Florez seconded the motion. The motion passed unanimously (5-0).

C. ZTA-14-02: Wireless Facilities

Chairperson Williams introduced the application and stated that Ben Gallop had done a good job revising the current Wireless Ordinance to be consistent with the recently adopted legislation. He then called on Wes Haskett to present the Staff Report (attached).

Chairperson Williams provided suggested revisions to the numbering of some of the sections in the ZTA and asked if there was a difference in the language that addresses consultants on pages 13 and 17. Ben Gallop stated that they were slightly different and established in the revised Statutes that apply to wireless facilities.

Gray Berryman motioned to recommend approval of the ZTA as amended to the Town Council. Mike Florez seconded the motion. The motion passed unanimously (4-0, John Finelli did not participate in the voting or discussion related to the application since the ZTA did not pertain to the ETJ areas).

VII. PUBLIC COMMENT:

None

VIII. PLANNING BOARD MEMBER COMMENTS:

Gray Berryman reminded everyone that the first public workshop for the Southern Shores Bicycle and Pedestrian Plan would be held on February 19th from 5:00 to 7:00 in the Pitts Center.

IX. ANNOUNCEMENTS:

Chairperson Williams noted that the next meeting is scheduled to be held on March 17, 2014.

X. ADJOURNMENT:

Mike Florez motioned to adjourn. Elizabeth Morey seconded the motion. The motion passed unanimously and the meeting adjourned at 8:00 p.m.

ATTEST:

RESPECTFULLY SUBMITTED:

Sam Williams, Chairperson

Wes Haskett, Town Planner

STAFF REPORT

To: Southern Shores Town Council
Date: February 19, 2014
Case: ZTA-14-02
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Zoning Ordinance regarding the following Sections: 36-175, Wireless Telecommunications Sites and Towers; 36-202, RS-1, Single-family District; 36-205, Low-density Residential District; 36-206, Government and Institutional District; and 36-207, C General Commercial District.

ANALYSIS

In October, 2013, new legislation adopted by the North Carolina General Assembly which applies to wireless facilities went into effect that sets standards regarding the expedited review of collocations and minor modifications requests. The Town Zoning Ordinance must be amended in order to be consistent with the recently adopted legislation which Town Staff has attempted to do in this Zoning Text Amendment Application. The proposed ZTA attempts to make the Town's current Wireless Facilities Ordinance consistent with new legislation.

RECOMMENDATION

The Town Planning Board unanimously (4-0) recommended approval of the application at the February 18, 2014 meeting. Town Staff recommends approval of the proposed amendment and that the application is consistent with the Town's currently adopted Land Use Plan.



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PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 1/20/14 Filing Fee: \$200 Receipt No.: N/A Application No. 27A-14-03

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36, Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ Chapter 30. Subdivisions-Town Code
- ☐ Chapter 36, Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- ☐ Chapter 36, Article IX. Planned Unit Development (PUD)
- ☐ Chapter 36, Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- ☐ Chapter 36, Article X. Section 36-300-Application for Permit for Conditional Use
- ☐ Chapter 36, Article X. Section 36-303 Fees
- ☒ Chapter 36, Article X. Section 36-304-Vested Rights
- ☒ Chapter 36, Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town Staff

Address: _____

Phone _____ Email _____

Applicant's Representative (if any)

Name _____

Agent, Contractor, Other (Circle one)

Address _____

Phone _____ Email _____

Property Involved: ☐ Southern Shores ☐ Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: ☐ Site Plan Review ☒ Final Site Plan Review ☐ Conditional Use ☐ Permitted Use
☐ PUD (Planned Unit Development) ☐ Subdivision Ordinance ☐ Vested Right ☐ Variance

Change To: ☐ Zoning Map ☒ Zoning Ordinance

Ww Hall
Signature

1-20-14
Date

* Attach supporting documentation.



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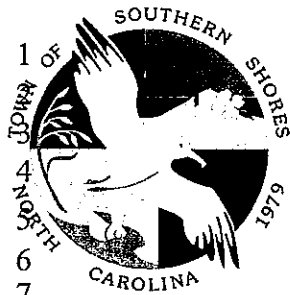
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ZTA-14-02

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, N.C.G.S. § 160A-400.50 et seq. governs the Town's authority to regulate wireless telecommunications facilities. 2013 N.C. Sess. Law 185 made substantial changes to the text of N.C.G.S. § 160A-400.50 et seq. and become the law of North Carolina as of October 1, 2013. The changes to N.C.G.S. § 160A-400.50 et seq. affect the Town's regulations of wireless telecommunications facilities and require that the Town's Zoning Ordinance be updated accordingly; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That Chapter 36 Section 36-202 be amended as follows:

1
2 (b) *Permitted uses.* The following uses shall be permitted by right:

- 3 ...
4 (8) ~~Collocated wireless facilities permitted to use streamlined processing~~
5 Collocations and Eligible Facilities Requests in compliance with Section 36-
6 175(~~bc~~).
7 ...

8
9 **PART II.** That Chapter 36 Section 36-205 be amended as follows:

10
11 (b) *Permitted uses.* The following uses shall be permitted by right:

- 12 ...
13 (7) ~~Collocated wireless facilities permitted to use streamlined processing~~
14 Collocations and Eligible Facilities Requests in compliance with Section 36-
15 175(~~bc~~).
16 ...

17
18 **PART III.** That Chapter 36 Section 36-206 be amended as follows:

19
20 (b) *Permitted uses.* The following uses shall be permitted by right:

- 21 ...
22 (7) ~~Collocated wireless facilities permitted to use streamlined processing~~
23 Collocations and Eligible Facilities Requests in compliance with Section 36-
24 175(~~bc~~).
25 ...

26
27 **PART IV.** That Chapter 36 Section 36-207 be amended as follows:

28
29 (b) *Permitted uses.* The following uses shall be permitted by right:

- 30 ...
31 (8) ~~Collocated wireless facilities permitted to use streamlined processing~~
32 Collocations and Eligible Facilities Requests in compliance with Section 36-
33 175(~~bc~~).
34 ...

35
36 **PART V.** That **Sec. 36-175 Wireless telecommunications sites and towers.** be
37 amended as follows:

38
39 **Sec. 36-175. Wireless telecommunications sites and towers.**

40
41 (a) *Definitions.* The following definitions shall apply to all portions of the
42 Town Code relating to the use or construction of any portion of a wireless
43 telecommunications site within the town.

- 44
45 (1) *Antenna:* Communications equipment that transmits, receives, or transmits
46 and receives electromagnetic radio signals used in the provision of all

types of wireless communications services.

- (2) *Application*: A formal request submitted to the city town to construct or modify a wireless support structure or a wireless facility.
- (3) *Base station*: A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.
- (4) *Building permit*: An official administrative authorization issued by the city town prior to beginning construction consistent with the provisions of G.S. 160A-417.
- ~~(45)~~ *Collocation*: ~~The installation of new wireless facilities on previously approved structures, including towers, buildings, utility poles, and water tanks. The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with this chapter.~~
- ~~(56)~~ *Eligible facilities request*: A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (7) *Equipment compound*: An area surrounding or near the base of a wireless support structure within which a wireless facility is located.
- ~~*Equipment enclosure*: An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.~~
- ~~(68)~~ *Fall zone*: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- ~~(79)~~ *Geographic antenna coverage area*: The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.
- ~~(810)~~ *Land development regulation*: Any ordinance enacted pursuant to this Part.
- ~~(911)~~ *Monopole*: A slender self-supporting telecommunications tower consisting of a single pole.

1 (~~10~~12) *Search ring*: The area within which a wireless support facility or wireless
2 facility must be located in order to meet service objectives of the wireless
3 service provider using the wireless facility or wireless support structure.
4

5 (~~11~~13) *Stealth structure*: A wireless support structure designed to look like or
6 incorporated within a structure which has a primary purpose as something
7 other than a wireless support structure or is otherwise designed in a
8 manner in which all wireless facilities attached to the structure are
9 concealed from view, including, but not limited to trees, flag poles, slick
10 sticks (flag poles without flags), clock towers, bell towers or church
11 steeples.
12

13 (~~12~~14) *Substantial modification*: The mounting of a proposed wireless facility on
14 a wireless support structure that substantially changes the physical
15 dimensions of the support structure. A mounting is presumed to be a
16 substantial modification if it meets any one or more of the criteria listed
17 below. The burden is on the local government to demonstrate that a
18 mounting that does not meet the listed criteria constitutes a substantial
19 change to the physical dimensions of the wireless support structure.
20

21 a. Increasing the existing vertical height of the structure by the
22 greater of (i) more than ten percent (10%) or (ii) the height of one
23 additional antenna array with separation from the nearest existing
24 antenna not to exceed 20 feet.
25

26 b. Except where necessary to shelter the antenna from inclement
27 weather or to connect the antenna to the tower via cable, adding an
28 appurtenance to the body of a wireless support structure that
29 protrudes horizontally from the edge of the wireless support
30 structure the greater of (i) more than 20 feet or (ii) more than the
31 width of the wireless support structure at the level of the
32 appurtenance.
33

34 c. Increasing the square footage of the existing equipment
35 compound by more than 2,500 square feet.
36

37 (~~15~~) *Telecommunications accessory equipment structure*: A building or
38 cabinet-like structure located adjacent to, or in the immediate vicinity of a
39 wireless support structure or antenna to house equipment incidental to the
40 receiving or transmitting of wireless broadcasts, cellular telephone calls,
41 voice messaging and paging services.
42

43 (~~13~~16) *Tower, short telecommunications*: A telecommunications tower with a
44 height that is less than 70 feet.
45

46 (~~14~~17) *Tower, tall telecommunications*: A telecommunications tower with a

height that is 70 feet tall or greater up to a height of 195 feet tall.

(1518) *Tower, telecommunication:* A freestanding wireless support structure, including stealth structures which are not incorporated within another type of structure, which are intended to support one or more wireless facilities.

(1619) *Utility pole:* A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(1720) *Water tower:* A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(21) *Wireless facility:* The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, ~~receivers~~ base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.

(1822) *Wireless support structure:* A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

(1923) *Wireless telecommunications site:* The combination of all of the materials and equipment on a site used to provide wireless telecommunications service including, but not limited to, any wireless support structures, telecommunications towers, wireless facilities, antennae, ground based communications equipment, telecommunications accessory equipment structures and equipment ~~enclosure~~ compounds.

~~(b) Streamlined collocation procedures. Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements, but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review. To be entitled to streamlined collocation procedures an applicant must meet the requirements of subsection (1), subsection (2) or subsection (3). Otherwise, applications for collocation shall be treated as an application for a new wireless telecommunication site, telecommunication tower or wireless facility.~~

~~(1) An application for collocation meets the requirements entitling an applicant to streamlined collocation procedures if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions~~

1 of the original approval. This provision applies to wireless support
2 structures which are approved on or after December 1, 2007.

3
4 ~~(2) An application for collocation meets the requirements entitling an~~
5 ~~applicant to streamlined collocation procedures if all of the following~~
6 ~~conditions exist:~~

7
8 ~~a. The collocation does not increase the overall height or width of the~~
9 ~~tower or wireless support structure to which the wireless facilities~~
10 ~~are to be attached. The overall height and width of a tower shall be~~
11 ~~measured at the highest and widest points of the existing wireless~~
12 ~~support structure including all antennae and other equipment~~
13 ~~mounted on the structure.~~

14
15 ~~b. The collocation does not increase the ground space area approved~~
16 ~~in the site plan for equipment enclosures and ancillary facilities.~~

17
18 ~~c. The wireless facilities in the proposed collocation comply with~~
19 ~~applicable regulations, restrictions, or conditions, if any, applied to~~
20 ~~the initial wireless facilities placed on the tower or other wireless~~
21 ~~support structure.~~

22
23 ~~d. The additional wireless facilities comply with all federal, State and~~
24 ~~local safety requirements including accepted industry standards for~~
25 ~~wind loading, base stabilization and other critical engineering~~
26 ~~characteristics as defined by American National Standards Institute~~
27 ~~(ANSI), Telecommunications Industry Association (TIA) and~~
28 ~~Electronic Industry Alliance (EIA) 222-G or its successors.~~

29
30 ~~e. The collocation does not exceed the applicable weight limits for~~
31 ~~the wireless support structure as certified by a professional~~
32 ~~engineer registered in North Carolina, unless the applicant~~
33 ~~provides plans prepared and certified by a professional engineer~~
34 ~~registered in North Carolina depicting structural modifications that~~
35 ~~would sufficiently increase the structural capacity of the wireless~~
36 ~~support structure.~~

37
38 ~~(3) An application for collocation meets the requirements entitling an~~
39 ~~applicant to streamlined collocation procedures if the applicant is~~
40 ~~requesting only the collocation of emergency service antennas used by the~~
41 ~~town's police department and/or fire service provider and the wireless~~
42 ~~structure has sufficient structural capacity to support the antennae being~~
43 ~~collocated without substantial modifications.~~

44
45 ~~(4) An application for collocation is complete when all the necessary grounds~~
46 ~~stated in this section for entitlement to streamlined processing have been~~

1 certified to by the applicant in writing or 45 days after its submittal to the
2 town if the town has not provided the applicant with written notice
3 identifying the deficiencies in the application which, if cured, would make
4 the application complete. The application shall be deemed complete on
5 resubmission if the additional materials cure the deficiencies identified.
6

7 ~~(5) The town shall issue a written decision approving or denying an~~
8 ~~application entitled to streamlined processing within 45 days of the date~~
9 ~~the application is complete. Failure to issue such a decision shall be~~
10 ~~deemed an approval of the application.~~
11

12 (b) *Requirements for wireless telecommunications sites, new wireless support*
13 *structures or substantial modification of wireless support structures.* All wireless
14 telecommunications sites, new wireless support structures or substantial modification of
15 wireless support structures located within the town must comply with all of the following
16 requirements:
17

18 (1) *Safety standards.* All proposed telecommunication towers, new wireless
19 support structures or substantial modification of wireless support
20 structures and wireless facilities shall comply with all applicable federal,
21 state and local laws including specifically the following:
22

- 23 (a) Federal Communications Commission standards, rules and
24 regulations;
25
- 26 (b) Federal Aviation Administration standards, rules and regulations;
27
- 28 (c) N.C.G.S. § 160-400.50 et seq.;
29
- 30 (d) The North Carolina Building Code;
31
- 32 (e) Accepted industry standards for wind loading, base stabilization
33 and other critical engineering characteristics as defined by
34 American National Standards Institute (ANSI),
35 Telecommunications Industry Association (TIA) and Electronic
36 Industry Alliance (EIA) 222-G or its successors.
37

38 (2) *Use guidelines and dimensional requirements.*
39

40 (a) *Permissible uses.* Wireless telecommunications sites and facilities
41 shall only be permitted as follows:
42

- 43 1. As an accessory use to an existing primary use that is not a
44 dwelling.
45
- 46 2. As a collocation of wireless facilities upon an existing

permitted wireless telecommunications site.

(b) *Collocation.*

1. Collocation of new antennas, wireless facilities and other equipment on an existing wireless support structure or structures within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at fair market value.
2. Short telecommunications towers including the structure and fenced compound shall be designed to accommodate the wireless facilities of at least one provider plus space for emergency communication antennas used by the town's police and fire service provider.
3. Tall telecommunications towers including the structure and fenced compound shall be designed to accommodate collocation of the wireless facilities of at least three providers plus space for emergency communication antennas used by the town's police and fire service provider.

(c) *Location.*

1. Tall telecommunications towers shall not be located within one-half mile of any other tall telecommunications tower or within 250 feet of any other wireless support structure located within the expected geographic antenna coverage area of the proposed telecommunication tower.
2. Short telecommunications towers and stealth structures incorporated within another structure shall not be located within 250 feet of any other wireless support structure located within the expected geographic antenna coverage area of the proposed wireless support structure unless the applicant can show that locating the structure within the prescribed distance is necessary to insure adequate coverage and capacity. In the case of a stealth structure incorporated within another structure, the town council may

1 reduce or disregard the distance requirement stated herein.
2

3 (d) *Height.* The height of a wireless support structure includes any
4 attached or proposed to be attached wireless facilities and shall be
5 measured vertically from the pre-disturbance ground level at the
6 center of the structure. The height shall not include emergency
7 communications antennas or lightning rod(s) attached to the
8 structure.
9

- 10 1. In no case shall a wireless support structure of any kind or
11 any attached wireless facilities exceed 195 feet in height.
12
- 13 2. The height of tall telecommunications towers shall not
14 exceed 195 feet.
15
- 16 3. The height of short telecommunications towers shall not
17 exceed 70 feet.
18
- 19 4. The height of stealth structures incorporated within or upon
20 an otherwise permitted structure shall not exceed the height
21 allowed for the structure.
22
- 23 5. The height of stealth structures designed to look like
24 another structure or naturally occurring thing, i.e. a tree,
25 shall not unreasonably exceed the height allowed for the
26 type of structure or the typical thing they are designed to
27 look like. The reasonableness of excess height shall be
28 considered on an application by application basis and shall
29 take into account the totality of the circumstances including
30 specifically, the height needed to provide communications
31 services and the wireless support structure's visual
32 consistency with the area in which it will be located.
33
- 34 6. In no case shall a wireless support structure of any kind or
35 any attached wireless facilities exceed the minimum height
36 necessary to accomplish the purpose it is proposed to serve.
37 Notwithstanding the foregoing, when measuring the height
38 of a wireless support structure, the purpose of the structure
39 may include maximizing the ability for collocations upon
40 the structure and shall include ensuring that the structure is
41 capable of supporting at least the minimum number of
42 collocations required by this ordinance.
43

44 (e) *Permitted structures.* Stand alone wireless support structures and
45 pole-like stealth structures shall be monopoles. Stealth structures
46 designed to look like other structures or naturally occurring things,

1 i.e. a tree, or that are incorporated within or upon any existing or
2 permitted structure are allowed if otherwise consistent with this
3 ordinance. Wireless support structures using other designs,
4 including, but not limited to guyed towers and lattice type towers
5 shall not be permitted.
6

7 (f) *Setbacks.*
8
9

10 1. Unless otherwise provided by this ordinance, the
11 dimensions of the entire lot shall be used to determine if a
12 wireless telecommunications site meets the dimensional
13 and setback requirements of this section. An existing use or
14 structure on the same lot shall not preclude locating a
15 wireless telecommunications site on a lot so long as
16 compliance with subsection 36-175(2)(a) is maintained.
17

18 2. The base of a wireless support structure shall be at located
19 at least one foot from the nearest property line for every
20 one foot of proposed height. In the case of stand alone
21 stealth structures only, the town council may in its
22 discretion consider publicly maintained roadways as
23 providing additional property for calculation of set backs
24 and/or reduce the setback requirement from this 1:1 setback
25 ratio to a setback of one-third of the height of the proposed
26 structure. The 1:1 setback requirement may only be
27 reduced to one-third of the height of the proposed structure
28 when a North Carolina registered professional engineer
29 certifies that the wireless support structure's fall zone is
30 equal to or less than the setback requested and that the
31 structure is designed to collapse within the setback
32 requested provided any or all of the following are also
33 shown by the applicant:
34

35 i. No dwelling unit is located or can be constructed
36 within the fall zone of the wireless support
37 structure; or
38

39 ii. Where a dwelling unit is located or can be
40 constructed within the fall zone of the wireless
41 support structure, all property owners within the fall
42 zone have agreed in writing or through sworn
43 testimony that they are willing to accept the risks of
44 the reduced setback.
45

46 3. When stealth structures are incorporated within or upon an

existing or otherwise permitted structure, the setbacks associated with the structure shall apply.

4. Telecommunications accessory equipment structures, any equipment ~~enclosure~~compounds and any other structures shall be set back a minimum of 50 feet from all property lines and rights-of-way. Where visual impact and public safety concerns will not be affected, the town council may reduce the setback to no less than 15 feet.

(g) *General aesthetics.*

1. Telecommunication towers, wireless facilities, accessory equipment structures and equipment ~~enclosure~~compounds shall be constructed and maintained to minimize visual obtrusiveness in color and finish. Stealth structures shall be consistent with the overall appearance of the town and of the area of town in which they are located.
2. Accessory equipment structures, equipment ~~enclosure~~compounds and related structures at telecommunication tower sites shall be of such design, materials and colors to blend with surrounding structures.
3. Outdoor storage of equipment or related items shall be prohibited at all wireless telecommunication sites.
4. Electrical and telephone lines serving a wireless telecommunication site shall be installed underground from the point of existing service.
5. Sound emissions, such as alarm bells, buzzers and the like, shall not be permitted. Nothing contained herein shall prohibit the reasonable use of emergency generators at wireless telecommunications sites.

(h) *Fencing.* All telecommunication towers, their accessory equipment structures and equipment ~~enclosure~~compounds shall be enclosed by chain link fencing and/or wall, not less than six feet nor more than ten feet in height. Such fences may be equipped with anti-climbing devices. The gate into the fenced area shall be located so that it is not easily visible from a street or adjacent property.

(i) *Screening/landscaping and buffers.*

1. The base of a wireless support structure, to a minimum

height of ten feet above average grade at the tower base, shall not be visible from any publicly owned or maintained roadway.

2. Screening is required along all exterior sides of the fence described above excluding the gate. Screening shall be a minimum width of ten feet with two staggered rows of planting material placed ten feet on center, that are a minimum of five feet in height when planted, and that are expected to reach a height of eight feet within three years. Suitable plant types shall be those recommended by the U.S. Department of Agriculture to achieve a mature growth height of eight to ten feet in the coastal area. The town council may waive or modify this requirement where existing trees, vegetation and/or structures provide suitable screening and buffering.

(j) *Lighting.*

1. Telecommunication towers shall be lighted only if specifically required by the Federal Aviation Administration, in which case, Federal Aviation Administration minimum lighting requirements shall be applied.
2. When lighting is required by the Federal Aviation Administration, strobe lights shall be avoided unless specified by Federal Aviation Administration. When strobe lights are required on telecommunication towers, a dual lighting system of white strobes for daytime lighting and a red flashing light atop the tower for nighttime lighting shall be used unless other lighting is specifically required by the Federal Aviation Administration, the U.S. Fish and Wildlife Service or any state or federal agency having regulatory authority over the applicant.
3. Except for lighting described in 2. above, all lighting at a wireless telecommunications site shall be shielded and shall comply with the provisions for outdoor lighting contained in section 36-166.

- (k) *Signage.* Wireless telecommunication sites shall not display signage, logos symbols or any messages of a commercial or non-commercial nature except for legal notices, identifications, directional and informational signs erected or required by governmental bodies, public utilities or civic associations with the

1 approval of town council;. A sign, not visible from a public right-
2 of-way or adjacent residences, shall be posted on the fence gate
3 identifying the current owner of the tower, emergency contact
4 person or agency, and applicable contact numbers. This provision
5 shall not preclude the applicant from posting any additional
6 signage required by federal or state law.
7

8 (c) Collocation and eligible facilities requests of wireless support structures.
9

- 10 (1) The town may not deny and shall approve any eligible facilities
11 request as provided in this section.
12
- 13 (2) No application or approval is required for routine maintenance and
14 this section shall not be construed to limit the performance of routine
15 maintenance on wireless support structures and facilities, including
16 in-kind replacement of wireless facilities. Routine maintenance
17 includes activities associated with regular and general upkeep of
18 transmission equipment, including the replacement of existing
19 wireless facilities with facilities of the same size.
20
- 21 (3) For all collocations and eligible facilities request, an application is
22 required.
23
- 24 (4) A collocation or eligible facilities request application is deemed
25 complete unless the town provides notice that the application is
26 incomplete in writing to the applicant within 45 days of submission or
27 within some other mutually agreed upon time frame. The notice shall
28 identify the deficiencies in the application which, if cured, would
29 make the application complete. The town may deem an application
30 incomplete if there is insufficient evidence provided to show that the
31 proposed collocation or eligible facilities request will comply with
32 federal, State, and local safety requirements. The town may not deem
33 an application incomplete for any issue not directly related to the
34 actual content of the application and subject matter of the collocation
35 or eligible facilities request. An application is deemed complete on
36 resubmission if the additional materials cure the deficiencies
37 indicated.
38
- 39 (5) The town shall issue a written decision approving an eligible facilities
40 request application within 45 days of such application being deemed
41 complete. For a collocation application that is not an eligible facilities
42 request, the town shall issue its written decision to approve or deny
43 the application within 45 days of the application being deemed
44 complete.
45
- 46 (6) The town may impose a fee not to exceed one thousand dollars
47 (\$1,000) for technical consultation and the review of a collocation or
48 eligible facilities request application. The fee must be based on the

1 actual, direct, and reasonable administrative costs incurred for the
2 review, processing, and approval of a collocation application. The
3 town may engage a third-party consultant for technical consultation
4 and the review of a collocation application. The town may incorporate
5 such fees into its generally adopted fee schedule. The fee imposed by
6 the town for the review of the application may not be used for either
7 of the following:
8

9 (a) Travel expenses incurred in a third-party's review of a collocation
10 application.
11

12
13 (b) Reimbursement for a consultant or other third party based on a
14 contingent fee basis or results-based arrangement.
15

16 (3d) *Application requirements:* Any person that proposes to construct or
17 substantially modify a wireless telecommunications site (including construction of wireless
18 support structures or substantial modifications of wireless support structures) or who
19 proposes to collocate or make an eligible facilities request shall submit a completed
20 application with the necessary copies to the town planning department. An application shall
21 not be deemed complete until all of the following items required have been submitted:
22

23 (1). For wireless telecommunications sites only, documentation
24 showing the reasonable feasibility of collocating new antennas,
25 wireless facilities and equipment on an existing structure or
26 structures within the applicant's search ring. If an applicant
27 contends that collocation on an existing structure is not reasonably
28 feasible he shall submit documentation that (1) collocation is
29 technically or commercially impractical; or (2) the owner of the
30 telecommunication tower is unwilling to enter into a contract for
31 such use at fair market value. At a minimum, technical
32 documentation shall include a map of the search ring displaying all
33 potential collocation sites and stating why each is suitable or
34 unsuitable. Where an applicant contends that the owner or an
35 existing wireless support structure or other feasible structure will
36 not contract for its use for fair market value, the applicant must
37 submit, in writing (1) a declaration from owners of all technically
38 feasible collocation sites stating the price at which they are willing
39 to negotiate space; (2) evidence that the applicant has tried in good
40 faith to negotiate market value terms for the collocation at each site
41 and (3) an licensed appraiser's certified opinion on the market
42 value of collocation at each technically feasible collocation site.
43

44 (2). A scaled site plan, scaled elevation view, and supporting drawings,
45 calculations and other documentation, prepared and sealed by
46 appropriate licensed professionals, showing the location and
47 dimensions of all improvements for the wireless

telecommunications site including topography, wireless supports structure height requirements, setbacks, access driveways or easements, parking, fencing, landscaping, adjacent uses and any other information necessary to assess compliance with this article and compatibility with surrounding uses.

- (3). For wireless telecommunications sites only, documentation that Federal Aviation Administration's minimum lighting standards have been met for the wireless telecommunications site.
- (4). For wireless telecommunications sites only, documentation that the proposed wireless telecommunications site will comply with all applicable FCC rules and regulations.
- (5). Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed wireless support structure and any attached wireless facilities and antennae meet or exceed accepted industry standards for wind loading, base stabilization and other critical engineering characteristics required by this ordinance, the North Carolina Building Code and the accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA) 222-G or its successors.
- (6). Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed wireless support structure and any attached wireless facilities and antennas do not exceed the minimum height necessary to accomplish the purpose for which they are constructed.
- (7). For wireless telecommunications sites only, documentation, prepared and sealed by a professional engineer registered in the state, stating the number of collocations that the proposed wireless support structure is designed to accommodate once constructed.
- (8). Documentation, prepared and sealed by a professional engineer registered in the state, to demonstrate that the wireless support structure has sufficient structural integrity for its intended uses. Documentation shall include a certification that all wireless support structures and attached wireless facilities shall be capable of withstanding sustained winds of at least 135 miles per hour whether or not all of the collocations the structure has been designed to accommodate have been attached to the structure.

- (9). ~~If the proposed wireless telecommunications site is to be located on lands owned by a party other than the applicant or the town,~~ A copy of the lease agreement with the property owner along with copies of any easement agreements necessary for ingress, egress and use of the property.
- (10). Documentation consisting of a certificate of insurance verifying the existence of general liability insurance coverage of at least \$5,000,000.00 at no cost to the town. The certificate shall contain a requirement that the insurance company notify the town 30 days prior to the cancellation, modification, or failure to renew the insurance coverage required.
- (11). For wireless telecommunications sites only, a copy of the approved National Environmental Policy Act of 1969 (NEPA) compliance report for all wireless support structures, antennas, wireless facilities, accessory structures or equipment proposed for the site, if such report is required to be produced pursuant to federal or state law.
- (12). For wireless telecommunications sites only, documentation from the town's police and fire service providers regarding the number and type of emergency communication antennas which are necessary for the wireless telecommunications site to support such communications along with a certification from a professional engineer registered in the state stating that the wireless telecommunications site is designed to support the attachment of the necessary emergency communication antennas.
- (13). For wireless telecommunications sites only, a memorandum of understanding regarding removal of abandoned structures and equipment located at the proposed wireless telecommunication site. Any wireless telecommunications site that is not operated for 180 continuous days in a 12-month period shall be considered abandoned. The owner of an abandoned wireless telecommunications site shall be responsible for the removal of all structures and equipment on the site within ninety (90) days of receipt of such notification by the town. Failure to remove abandoned equipment will result in its removal by the town at the owner's expense. In its discretion, the town may condition approval of a permit for building of the proposed wireless support structure on the applicant providing a bond or letter of credit sufficient to allow the town to remove the proposed structure if it is abandoned and not removed within the allowed time period by the applicant.
- (14). Any other documentation necessary to ensure compliance with this

1 section as well as applicable federal and state laws.
2

3 (4e) *Review process.* The town will use the following criteria in its review of
4 an application for any wireless telecommunication site, telecommunication tower,
5 wireless facility, antennae or accessory structure.
6

- 7 1. The proposed application meets or exceeds the standards of this
8 section.
9
- 10 2. The use will not materially endanger the public health, safety or
11 welfare if located where proposed and developed according to the
12 plan submitted.
13
- 14 3. The required conditions, specifications, and actions described in
15 this article have been met.
16
- 17 4. The location and character of the facility will be in harmony with
18 the area in which it is to be located.
19

20 (5a) *Consultants.* ~~The town may fix and charge an application fee;~~
21 ~~consulting fee, or other fee associated with the submission, review,~~
22 ~~processing, and approval of an application to site or modify wireless~~
23 ~~support structures or wireless facilities that is based on the costs of the~~
24 ~~services provided and does not exceed what is usual and customary for~~
25 ~~such services. Any charges or fees assessed by the town on account of an~~
26 ~~outside consultant shall be fixed in advance and incorporated into a permit~~
27 ~~or application fee and shall be based on the reasonable costs to be incurred~~
28 ~~by the town in connection with the regulatory review of an application.~~
29 ~~The town may impose additional reasonable and cost based fees for costs~~
30 ~~incurred should an applicant amend its application. On request, the amount~~
31 ~~of the consultant charges incorporated into the permit or application fee~~
32 ~~shall be separately identified and disclosed to the applicant. The town may~~
33 fix and charge an application fee, consulting fee, or other fee associated with
34 the submission, review, processing, and approval of an application to site new
35 wireless support structures or to substantially modify wireless support
36 structures or wireless facilities that is based on the costs of the services
37 provided and does not exceed what is usual and customary for such services.
38 Any charges or fees assessed by the Town on account of an outside consultant
39 shall be fixed in advance and incorporated into a permit or application fee and
40 shall be based on the reasonable costs to be incurred by the town in
41 connection with the regulatory review authorized under this section. The town
42 may incorporate such fees into its generally adopted fee schedule. The town
43 may impose additional reasonable and cost based fees for costs incurred
44 should an applicant amend its application. On request, the amount of the
45 consultant charges incorporated into the permit or application fee shall be
46 separately identified and disclosed to the applicant. The fee imposed by the

town for review of the application may not be used for either of the following:

- (i) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.
- (ii) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

(6b) *Conditions.* The town council may place reasonable conditions on the issuance of a conditional use permit pursuant to this section regarding public safety, land use, or zoning issues, including, but not limited to, aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones. The town may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. The town shall not deny an initial land-use or zoning permit based on such documentation.

(c) *Decisions.* The town shall issue a written decision approving or denying an application under this section within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(df) *Annual review.* Any person who holds a zoning or conditional use permit issued pursuant to this section shall annually submit an application for a renewal permit.

(1) *Procedure.* In order for a zoning or conditional use permit to remain valid, a renewal permit must be issued within 365 days of the issuance of the certificate of occupancy related to the initial permit or of the date of the issuance of the previous annual renewal permit. The application for a renewal permit must be received no less than ten days prior to nor more than 30 days prior to the date a renewal permit must be issued. Upon review of the application and determination of the applicant's compliance with the annual review requirements of this section the town's code enforcement and inspections department shall issue a renewal permit for an additional 365-day period. A permit holder's renewal application packet must include all of the following:

- a. A renewal application fee in the amount set by the town.
- b. A complete renewal application presented on a form prepared and

1 is applicable. For all of the above-stated reasons and any additional reasons supporting
2 the Town's adoption of this ordinance amendment, the Town considers the adoption of
3 this ordinance amendment to be reasonable and in the public interest.
4

5 **ARTICLE V. Severability.**
6

7 All Town ordinances or parts of ordinances in conflict with this ordinance amendment
8 are hereby repealed. Should a court of competent jurisdiction declare this ordinance
9 amendment or any part thereof to be invalid, such decision shall not affect the remaining
10 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the
11 Town of Southern Shores, North Carolina which shall remain in full force and effect.
12

13 **ARTICLE VI. Effective Date.**
14

15 This ordinance amendment shall be in full force and effect from and after the ____ day of
16 _____, 2014.
17
18
19

20 _____, Mayor
21
22

23
24 ATTEST:
25
26
27

28 _____
Town Clerk
29
30

31 APPROVED AS TO FORM:
32
33
34

35 _____
Town Attorney
36

37 Date adopted:
38
39

40 _____
Motion to adopt by Councilmember:
41

42 _____
Motion seconded by Councilmember:
43
44
45
46

Vote: __AYES__ NAYS

provided by the town's code enforcement and inspections department.

c. Documentation consisting of a certificate of insurance verifying the continued existence of general liability insurance coverage meeting or exceeding the requirements of section 36-175(c)(3)j. during the time period that the renewal permit will be valid.

d. Documentation signed and sealed by a state registered engineer indicating that all structures and equipment have remained in compliance with all local, state, and federal requirements, including but not limited to, the requirements of this ordinance at the time the original permit was issued and any requirements or conditions stated in the original permit.

(2) *Noncompliance.* Upon a permit holder's failure to submit a timely renewal application or the permit holder's failure to otherwise comply with this section the previously issued permit and/or renewal permit shall be suspended upon reaching the date that a renewal permit must be issued. Once suspended, the permit shall remain suspended until the permit holder submits an application and a review of the application by the town's code enforcement and inspections departments determines that the permit holder has complied with the annual review requirements of this section. Upon such a showing, the town shall issue a renewal permit for an additional 365-day period. If a suspension continues for more than 30 days, the permit holder's existing permit and/or renewal permit(s) shall expire.

(eg) *Validity of permits.* A conditional use permit or zoning permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within 24 months of the date of the approval of a building permit.

(fh) *Waiver or modification of requirements:* If upon the review of any application submitted pursuant to this section, the town council determines that denial of a permit based on any requirement or requirements of this section as applied to the application before the town council may be contrary to federal or state law, the town council may in its sole discretion vary, modify or disregard any such requirement in a manner which complies with the relevant law. The town council may continue any public hearing on a permit application for a reasonable time to consider such a determination and its actions thereon.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that